

Sun Engine and Transmission Sales, Inc. and Amalgamated Clothing and Textile Workers Union.
Case 16-CA-16718

July 28, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On May 25, 1994, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 16-RC-9650. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On June 20, 1994, the General Counsel filed a Motion for Summary Judgment. On June 23, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

¹ The Respondent denies that the unit is properly described in the complaint. The complaint alleges the unit as set forth in the Stipulated Election Agreement. That agreement also contained a footnote which clarified certain aspects of the unit description. The footnote has not been referenced in other descriptions of the unit and is not part of the specific description agreed on by the parties and approved by the Regional Director. It is nonetheless binding on the parties as part of their agreement and is applicable in any consideration of the unit description.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation with an office and place of business in Dallas, Texas, has been engaged in the business of rebuilding of automobile transmissions and engines.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business, purchased and received at its Dallas, Texas facility goods valued in excess of \$50,000 directly from points outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 15, 1993, the Union was certified on January 14, 1994, as the collective-bargaining representative of the employees in the following appropriate unit:

INCLUDED: All Production, Maintenance, Quality Control, Warehouse and Plant Clerical Employees, employed at the Dallas facility on Regal Road.

EXCLUDED: Over the Road Truck Drivers, All Professional, Technical and Office Clerical Employees, Sales People, Security Guards and Supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since February 11, 1994, the Union has requested the Respondent to bargain and, since May 6, 1994, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after May 6, 1994, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Sun Engine and Transmission Sales, Inc., Dallas, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Amalgamated Clothing and Textile Workers Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All Production, Maintenance, Quality Control, Warehouse and Plant Clerical Employees, employed at the Dallas facility on Regal Road.

EXCLUDED: Over the Road Truck Drivers, All Professional, Technical and Office Clerical Employees, Sales People, Security Guards and Supervisors as defined in the Act.

(b) Post at its facility in Dallas, Texas, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's au-

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

thorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 28, 1994

William B. Gould IV, Chairman

James M. Stephens, Member

Dennis M. Devaney, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Amalgamated Clothing and Textile Workers Union as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: All Production, Maintenance, Quality Control, Warehouse and Plant Clerical Employees, employed at our Dallas facility on Regal Road.

EXCLUDED: Over the Road Truck Drivers, All Professional, Technical and Office Clerical Employees, Sales People, Security Guards and Supervisors as defined in the Act.

SUN ENGINE AND TRANSMISSION SALES,
INC.